686.

SUPREME COURT OF THE UNITED STATES.

No. 146.

HENRY H. BOODY AND NATHAN NUTTER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF MAINE.

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UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the [L. S.] circuit court, holden at Portland, within and for the Maine district, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, between the United States of America, plaintiffs, and Thomas Todd, Henry H. Boody, and Nathan Nutter, all of Portland, in said Maine district, defendants, in a plea of debt, manifest error has intervened to the great damage of the said Boody and Nutter, as in their complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the justices of the Supreme Court of the United States next to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next; that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the United States, at Portland, the twenty-third day of July, in the year of our Lord one thousand eight hundred and forty-six.

J. MUSSEY, *Clerk.*

Allowed,

ASHUR WARE.

MAINE DISTRICT, *ss:*

Circuit court, first circuit, October 1, 1846.

Pursuant to the within writ I do hereby, under my seal, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, to the justices of the Supreme Court of the United States, at the city of Washington, in the District of Columbia, to be holden at the time within mentioned.

LEVI WOODBURY, [L. S.]
Ass. Jus. of the Sup. Court.

MAINE DISTRICT, *ss:*

The President of the United States of America, to the marshal of the [L. S.] district of Maine, or his deputy, greeting:

Whereas, in the record and in the judgment of a suit which was determined in our circuit court of our district of Maine, holden at Portland, within and for said district, on the first day of May, and by adjournment thereof on the seventh day of July instant, in which suit the United States of America were plaintiffs, and Thomas Todd, Henry

H. Boody, and Nathan Nutter, all of said Portland, defendants, manifest error, it is said, has intervened, to the great damage of the said Boody and Nutter, as by their complaint we perceive; which record and judgment we for certain reasons have caused to be brought before our justices of the Supreme Court, next to be holden at the city of Washington, on the first Monday of December next, in order that the error therein, if any there be, may be duly corrected; we command you, therefore, that you make known to Augustine Haines, esquire, district attorney of said United States for said Maine district, that he be before our said justices of our Supreme Court, to be holden at Washington on the first Monday of December next, to hear the record and judgment aforesaid, if he shall see cause, and to do and receive in behalf of said United States whatsoever the same court shall consider thereupon.

Given under the hand of our district judge, and the seal of our said circuit court, the twenty-third day of July, in the year of our Lord one thousand eight hundred and forty-six.

Allowed, ASHUR WARE.

I hereby acknowledge notice of the within, and waive all objection to the mode of service.

AUGUSTINE HAINES,
U. S. District Attorney.

To the justices of the Supreme Court of the United States of America, next to be holden at Washington, in the District of Columbia, on the first Monday of December, in the year of our Lord one thousand eight hundred and forty-six.

Complain Henry H. Boody and Nathan Nutter, both of Portland, in the State of Maine, and within the district of Maine, that in the record of a suit, wherein the United States of America were plaintiffs, and your complainants were defendants, in the district court of the United States, holden at Wiscasset, within and for said Maine district, on the first Tuesday of September, A. D. one thousand eight hundred and forty-one, before the honorable Ashur Ware, judge of said court, in which said suit judgment was rendered for said United States of America against said complainants, as sureties, and one Thomas Todd, of Portland, aforesaid, as principal, for the penal sum of eight thousand dollars, and execution was ordered to be issued for the sum of two thousand eight hundred and twenty-nine dollars and seventy-six cents, debt, and costs taxed at one hundred and nine dollars and six cents; in which said suit a writ of error issued from the circuit court of the United States for the first circuit to said district court of the United States, in which your complainants were plaintiffs in error, and said United States of America were defendants in error; in which said suit, the said judgment of said district court of the United States was, by said circuit court of the United States, on the fifteenth day of July, A. D. one thousand eight hundred and forty-six, at a court held in Portland aforesaid, by adjournment of the May term of said court, affirmed; whereof an authenticated transcript in said Supreme Court of the United States shall be produced, the following manifest error hath intervened,

to wit, that the judgment rendered in said suit is—that the said United States of America recover against the said defendants, in said district court, and plaintiffs in error in said circuit court, the sum of eight thousand dollars, penalty in said bond mentioned, and that execution issue for the sum of twenty-eight hundred and twenty-nine dollars and seventy-six cents damages, together with accruing interest from the seventh day of September, in the year of our Lord one thousand eight hundred and forty-one, and costs of suit;—whereas it ought to be, that the said United States of America take nothing by their writ against the said Boody and Nutter. Wherefore the said Boody and Nutter pray the consideration of the justices aforesaid, and that the judgment aforesaid, and every part thereof, may be reversed.

HENRY H. BOODY & NATHAN NUTTER,
By THOMAS AMORY DEBLOIS, *their Attorney.*

Know all men by these presents, that we, Henry H. Boody and Nathan Nutter, both of Portland, in the county of Cumberland, and Joshua Durgin, and Samuel Rolfe, and James C. Churchill, all of said Portland, said Boody and Nutter as principals, and as sureties said Durgin, Rolfe, and Churchill, are holden and stand firmly bound and obliged unto the United States of America, in the sum of eight hundred dollars, to be paid to the said United States of America or assigns; to the which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated the twenty-third day of July, anno domini one thousand eight hundred and forty-six.

The condition of the above obligation is such, that whereas Henry H. Boody, and Nathan Nutter, and Thomas Todd, all of said Portland, in the State of Maine, and citizens of said State of Maine, have sued out of the clerk's office of the Supreme Court of the United States of America a writ of error to the circuit court of the United States of America, for the first circuit, to reverse a judgment there rendered, in a certain plea of debt, brought in the district court of the United States for the Maine district, on a certain bond, and by writ of error from the circuit court of the United States, for the first district, transferred to said circuit court, in which the United States of America was plaintiff, and said Thomas Todd, said Henry H. Boody, and Nathan Nutter were defendants, and in which said district court judgment was rendered for the said United States of America for the sum of eight thousand dollars, the penal sum in said bond; and that execution issue thereon for the sum of twenty-eight hundred and twenty-nine dollars and seventy-six cents damages, and one hundred and nine dollars and six cents costs of suit—in the said circuit court, the said Nutter and Boody being plaintiffs in error, and said United States of America being defendants in error, in which said suit in error, the judgment of said circuit court was, that the judgment of said district court be affirmed.

And whereas said writ of error to said circuit court of the United States has been duly served, now, therefore, if the said plaintiffs in error shall prosecute their writ to effect, and answer all damages and

costs if they fail to make their plea good, then this obligation is to be void, otherwise to remain in force and virtue.

HENRY H. BOODY, [L. S.]
NATHAN NUTTER, [L. S.]
JOSHUA DURGIN, [L. S.]
SAMUEL ROLFE, [L. S.]
J. C. CHURCHILL. [L. S.]

Signed, sealed, and delivered in presence of—
CALEB S. CARTER,
Witness to all the signatures.

Approved—the sureties being in my opinion sufficient to answer for the penal sum in the bond.

ASHUR WARE,
District judge, &c.

MAINE DISTRICT, *ss:*

[L. S.] The President of the United States of America, to the marshal of the district of Maine, or his deputy, greeting:

Whereas, in the record and in the judgment of a suit which was determined in our district court, of our district of Maine, holden at Wiscasset, within and for our said district, on the first Tuesday, being the seventh day of September instant, in which suit the United States were plaintiffs, and Henry H. Boody and Nathan Nutter, together with one Thomas Todd, all of Portland, in Maine district, were defendants, manifest error, it is said, has intervened, to the great damage of the said Boody and Nutter, as by their complaint we perceive; which record and judgment we, for certain reasons, have caused to be brought before our justices of our circuit court, of our first circuit, next to be holden at Wiscasset, within and for our said district of Maine, on the first day of October next, in order that the error therein, if any there be, may be duly corrected.

We command you, therefore, that you make known to John Holmes, esquire, district attorney of the said United States for our said district of Maine, that he be before our said justices of our said circuit court, to be holden at Wiscasset aforesaid, on the first day of October next, to hear the record and judgment aforesaid, if he shall see cause, and to do and receive, in behalf of the said United States, whatever the same court shall consider thereupon.

Given under the hand of our said judge, and the seal of our said [L. S.] district court, the tenth day of September, in the year of our Lord one thousand eight hundred and forty-one.

ASHUR WARE.

10*th September*, 1841.

I acknowledge service of the within.

J. HOLMES, *U. S. D. A.*

UNITED STATES, *ss:*

[L. S.] The President of the United States, to the judge of the district court, holden in and for the district of Maine, greeting:

Because that in the record and process, and also in the rendering of judgment in a suit before you, between the United States of America, plaintiffs, and Henry H. Boody and Nathan Nutter, together with one Thomas Todd, all of Portland, in Maine district, defendants, in a plea of debt, manifest error has intervened, to the great damage of the said Boody and Nutter, as in their complaint has been stated.

And as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the justices of the circuit court of the United States, for the first circuit, next to be holden at Wiscasset, within and for the Maine district, on the first day of October next; that the record and process aforesaid being inspected, they may cause to be done thereupon, what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the United States, at Portland, the tenth day of September, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

JOHN MUSSEY, *Clerk.*

Allowed by:

ASHUR WARE.

DISTRICT OF MAINE, *ss:*

September 24th, A. D. 1841.

Pursuant to the within writ, to me directed, I do hereby, under my seal, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, to the justices of the circuit court of the United States, at Wiscasset, to be holden at the time within mentioned.

[L. S.]

ASHUR WARE,
Judge of the district court of Maine.

To the justices of the circuit court for the first circuit of the United States, to be holden at Wiscasset, within and for Maine district, on the first day of October, A. D. eighteen hundred and forty-one.

Complain Henry H. Boody and Nathan Nutter, both of Portland, within said district, that in the record of a suit wherein the United States of America were plaintiffs, and your complainants, together with one Thomas Todd, also of said Portland, were defendants, in the district court of the United States holden at Wiscasset, within and for said Maine district, before the honorable Ashur Ware, judge of said court, on the first Tuesday, being the seventh day of September, A. D. eigh-

teen hundred and forty-one, whereof an authenticated transcript in the said circuit court shall be produced, the following manifest error hath intervened, to wit, that the judgment rendered in the said suit is—"that the said United States recover against the said defendants the sum of eight thousand dollars, being the penalty demanded; but that execution issue for twenty-eight hundred and twenty-nine dollars and seventy-six cents, the sum now equitably due to the plaintiffs, with costs of suit, taxed at one hundred and nine dollars and six cents; and also for such other and further sum as the legal interest upon the said principal, at and after the rate of six per centum per annum, shall amount to, computing from said seventh day of said September, unto the time when said judgment shall be fully discharged and satisfied;" whereas it ought to be that the said United States take nothing by their writ against the said Boody and Nutter.

Wherefore the said Boody and Nutter pray the consideration of the justices aforesaid, and that the judgment aforesaid, and every part thereof, may be reversed.

FRANCIS O. J. SMITH,
Counsel for H. H. Boody and N. Nutter.

Know all men by these presents, that we, Henry H. Boody and Nathan Nutter, both of Portland, in the district of Maine, are held, and stand firmly bound unto the United States of America, in the sum of two hundred dollars, to be paid to the said United States on demand; to the payment of which sum we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals; dated this tenth day of September, in the year of our Lord one thousand eight hundred and forty-one.

The condition of the foregoing obligation is this, that whereas the said United States, at a district court holden at Wiscasset, within and for said district of Maine, on the first Tuesday of September instant, recovered judgment against the said Boody and Nutter, together with one Thomas Todd, for the sum of twenty-eight hundred twenty-nine dollars and seventy-six cents debt, or damage, and costs of suit taxed at one hundred nine dollars and six cents; for the reversal of which judgment the said Boody and Nutter have this day sued out from the circuit court of the United States a writ of error, directed to the judge of said district court, and returnable to the said circuit court to be holden at Wiscasset for the first circuit, on the first day of October next.

Now, if the said Boody and Nutter shall prosecute their said writ of error to effect, and shall answer all damages and costs if they shall fail to make good their plea, then the above obligation to be null and void, otherwise to remain in full force and virtue.

HENRY H. BOODY, [L. S.]
NATHAN NUTTER. [L. S.]

Signed, sealed, and delivered, in presence of—
CHS. M. DAVIS,
JAMES M. CHURCHILL.

A true copy—attest: J. MUSSEY, *Clerk.*

DISTRICT OF MAINE, *ss:*

The President of the United States of America, to the marshal of our
[L. S.] district of Maine, or his deputy, greeting:

We command you to attach the goods or estate of Thomas Todd, esquire, Henry H. Boody, and Nathan Nutter, gentlemen, all of Portland, in our said district, to the value of five thousand dollars, and for want thereof to take the bodies of the said Todd, Boody, and Nutter, (if they may be found in your precinct,) and them safely keep, so that you have them before our district court next to be holden at Wiscasset, within and for our district of Maine, on the first Tuesday of September next, then and there in our said court to answer unto the United States of America in a plea of debt; for that the said Todd, Boody, and Nutter, at said Portland, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-four, by their writing obligatory of that date, sealed with their seals, and having been destroyed by fire cannot here in court be produced, dated the day and year last aforesaid, bound themselves unto William T. Barry, late Postmaster General of said States, or his successor in office, in the sum of twelve thousand dollars, to be paid to said Barry, or his successor in said office, by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, by their other writing obligatory of that date, by them signed and sealed with their seals, and having been lost and destroyed by fire cannot here in court be produced, bound themselves unto said States in the other sum of ten thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, by their other writing obligatory of that date, sealed with their seals, and here in court to be produced, dated the day and year aforesaid, bound themselves unto said States in the other sum of eight thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand. Yet, though requested, said Todd, Boody, and Nutter, or either of them, have not paid said sums, but owe and detain the same, to the damage of the said plaintiffs, as they say, the sum of five thousand dollars, which shall then and there be made to appear, with other damages due; and have you there this writ, with your doings therein.

Witness Ashur Ware, esq., at Portland, the first day of June, in the year of our Lord one thousand eight hundred and forty.

J. MUSSEY, *Clerk.*

Mr. Marshal, attach property to respond damages and costs.

JOSEPH HOWARD,
U. S. attorney.

MAINE DISTRICT, *ss:*

June 2d, A. D. 1840. At ten o'clock in the forenoon, by virtue of

the within writ, I attached all the right, title, interest, estate, claim, and demand, of every name and nature, of the within named Thomas Todd, Henry H. Boody, and Nathan Nutter, in and to all and any real estate in the county of Cumberland, within my precinct.

GORHAM PARKS, *Marshal.*

MAINE DISTRICT, *ss:*

June 5th, 1840. I this day left with the register of deeds of Cumberland county a written notice of the attachment above made, together with a statement of the nature of the writ, the sum sued for, and a specification of the claims intended to be proved.

GORHAM PARKS, *Marshal.*

July 20th, 1840. I this day gave Todd and Nutter a summons in hand, and left a summons at Boody's place of abode.

GORHAM PARKS, *Marshal.*

Fees—Service	$6 00
Travel	3 00
Registry	35
	$9 35

A true copy from the original.

Attest: J. MUSSEY, *Clerk.*

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify, that C. H. W. Wharton, whose name is subscribed to the paper hereunto annexed, is now, and was at the time of subscribing the same, a justice of the peace for the county of Washington, in the District of Columbia, duly commissioned, and that full faith and confidence are due to his acts as such.

In testimony whereof, I, A. Vail, acting Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed. Done at the [L. S.] city of Washington, this twenty-second day of May, A. D. 1840, and of the independence of the United States of America the sixty-fourth.

A. VAIL,
Acting Secretary of State.

COUNTY OF WASHINGTON,
District of Columbia, sct:

On this twentieth day of May, in the year one thousand eight hundred and forty, personally appeared before me, the subscriber, a justice of the peace for said county, Allan Macrae, who, being by me duly sworn, deposeth and saith, that he is a clerk in the Post Office Department, and is employed in registering, in a book kept for that purpose, the bonds taken of postmasters for the faithful performance of their offi-

cial duties; that he has this day examined said book, and finds, from an entry made therein, that Thomas Todd, who was appointed postmaster at Portland, in the county of Cumberland, and State of Maine, on the eighth day of December, 1834, executed and delivered to the Postmaster General a bond, with Henry H. Boody and N. Nutter his sureties, dated the fifteenth day of December, 1834, in the penal sum of twelve thousand dollars, conditioned that he, the said Thomas Todd, would well and truly execute the duties of said office, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; and would pay all moneys that should come to his hands, for the postage of whatever is by law chargeable with postage, to the Postmaster General of the United States for the time being, deducting only the commissions and allowances made by law for his care, trouble, and charges in managing said office; and would also faithfully do and perform, as agent for the General Post Office, all such acts and things as might be required of him by the Postmaster General; and moreover, would faithfully account with the said Postmaster General for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, should receive for the use and benefit of said General Post Office.

And deponent further saith, that nearly all the bonds of postmasters, among the files of the appointment office of the Post Office Department, were destroyed on the morning of the fifteenth day of December, eighteen hundred and thirty-six, by the fire which consumed the building in which said department was kept; and that he has every reason to think, and verily believes, that the bond of said Thomas Todd was among said bonds, and was destroyed at the time and in the manner aforesaid.

A. MACRAE, *Clerk.*

Sworn before me, C. H. W. WHARTON,
Justice of the peace for the county aforesaid.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify, that C. H. W. Wharton, whose name is subscribed to the paper hereunto annexed, is now, and was at the time of subscribing the same, a justice of the peace for the county of Washington, in the District of Columbia, duly commissioned, and that full faith and confidence are due to his acts as such.

In testimony whereof, I, A. Vail, acting Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed. Done at the [L. S.] city of Washington, this twenty-second day of May, A. D. 1840, and of the independence of the United States of America the sixty-fourth.

A. VAIL,
Acting Secretary of State.

COUNTY OF WASHINGTON,
District of Columbia, sct:

On this twentieth day of May, in the year one thousand eight hundred and forty, personally appeared before me, the subscriber, a justice of the peace for said county, Allan Macrae, who, being by me duly sworn, deposeth and saith, that he is a clerk in the Post Office Department, and is employed in registering, in a book kept for that purpose, the bonds taken of postmasters for the faithful performance of their official duties; that he has this day examined said book, and finds, from an entry made therein, that Thomas Todd, who was appointed postmaster at Portland, in the county of Cumberland, and State of Maine, on the ninth day of July, 1836, executed, and delivered to the Postmaster General, a bond, with Nathan Nutter and Henry H. Boody his sureties, dated the sixteenth day of July, 1836, in the penal sum of ten thousand dollars, conditioned that he, the said Thomas Todd, would well and truly execute the duties of the said office, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditures, as postmaster, to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; and would pay all moneys that should come to his hands for the postage of whatever is by law chargeable with postage, to the Postmaster General of the United States for the time being, deducting only the commissions and allowances made by law for his care, trouble, and charges in managing said office; and would faithfully do and perform, as agent for the General Post Office, all such acts and things as might be required of him by the Postmaster General; and moreover, would faithfully account with the said Postmaster General for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, should receive for the use and benefit of said General Post Office.

And deponent further saith, that nearly all the bonds of postmasters, among the files of the appointment office of the Post Office Department, were destroyed on the morning of the fifteenth day of December, eighteen hundred and thirty-six, by the fire which consumed the building in which said department was kept; and that he has every reason to think, and verily believes, that the bond of said Thomas Todd was among said bonds, and was destroyed at the time and in the manner aforesaid.

A. MACRAE, *Clerk.*

Sworn before me,

C. H. W. WHARTON,
Justice of the peace for the county aforesaid.

Know all men by these presents, that we, Thomas Todd, of Portland, in the county of Cumberland, State of Maine, and Henry H. Boody and Nathan Nutter, of said Portland, are held and firmly bound unto the United States of America in the just and full sum of eight thousand dollars; for the payment whereof, well and truly to be made,

we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

In witness whereof, we have hereunto subscribed our names, and affixed our seals, this ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven.

The condition of this obligation is such, that whereas the above bounden Thomas Todd is postmaster at Portland aforesaid, now, if the said Thomas Todd shall well and truly execute the duties of said office, according to law and the instructions of the Postmaster General, and faithfully, once in three months, and oftener if thereto required, render accounts of his receipts and expenditure as postmaster to the General Post Office, in the manner and form prescribed by the Postmaster General in his several instructions to postmasters; and shall pay the balance of all moneys that shall come to his hands, for the postage of whatever is by law chargeable with postage, in the manner prescribed by the Postmaster General of the United States for the time being; and shall also faithfully do and perform, as agent for the General Post Office, all such acts and things as may be required of him by the Postmaster General; and moreover, shall faithfully account with the United States, in the manner directed by the said Postmaster General, for all moneys, bills, bonds, notes, receipts, and other vouchers, which he, as agent as aforesaid, shall receive for the use and benefit of said General Post Office, then the above obligation shall be void.

THOMAS TODD, [L. S.]
HENRY H. BOODY, [L. S.]
NATHAN NUTTER. [L. S.]

Signed, sealed, and delivered, in presence of—
JOHN S. KIMBALL,
JOHN ANDERSON.

I hereby certify, that Henry Boody and Nathan Nutter are good and sufficient sureties, severally, to the amount of the penalty in the foregoing bond.

JOHN ANDERSON,
U. States dist. attorney, Maine district.

DR. *Thomas Todd, late Postmaster, Portland, Me., in account with the United States.* CR.

To balance due on his quarterly returns as P. M. from Jan. 1, to April 1, 1835, ...	1,760 16	1835. Feb. 6,	By Cash, ...	350 00
Ap'l 1 to July 1, 1835,	1,814 84	March 7,	" do.	350 00
July 1 to Oct. 1, "	1,782 03	April 7,	" do.	1,060 16
1835, Oct. 23, to this sum receiv d for sundry old mail bags sold, ...	4 97	May 7,	" do.	350 00
		June 6,	" do.	350 00
		July 7,	" do.	1,111 93
		Aug. 7,	" do.	350 00
		Sept. 9,	" do.	350 00
To ac'ts from Oct. 1 to Dec. 31, 1835, ...	1,901 95	Nov. 19,	" this sum paid for repairing mail bags, ..	50
To ac'ts from Jan. 1 to March 31, 1836, ...	2,200 24	Dec. 31,	" ditto, ...	2 13
		Oct. 13,	" Cash, ...	1,177 07
To surplus commissions for quarter ending Oct. 1, 1835, ...	96 47	" 14,	" do.	4 97
		Nov. 9,	" do.	350 00
		Dec. 7,	" do.	350 00
To accounts from April 1 to June 30, 1836, ..	1,942 01	1836. Jan. 7,	" do.	1,199 61
		Feb. 8,	" do.	350 00
		March 7,	" do.	350 00
		" 10,	By this sum paid for repairing mail locks, &c	1 12
		June 30,	By do. do. mail bags, ..	6 63
		April 7,	" Cash, ...	1,488 61
		May 7,	" do.	400 00
		June 8,	" do.	350 00
		July 12,	" do.	1,191 60
			Balance, ...	8 34
	11,502 67			11,502 67
To balance, ...	8 34			

DR. *Thomas Todd, late Postmaster, Portland, Me., in account with the United States.* CR.

To balance brought from first account, as above,	8 34	1836. August 8,	By Cash,		350 00
To surplus commissions over expenses of office, &c. for the quarter ending Sept. 30, 1836,	296 83	Sept. 7,	" do.		400 00
		" 30,	By this paid for making mail bags,		30 50
To accounts from July 1 to Sept. 30, 1836,	1,679 07	Oct. 10,	By Cash,		875 91
To accounts from Oct. 1 to Dec. 31, 1836,	1,997 60	Nov. 9,	" do.		350 00
To accounts from Jan. 1 to March 31, 1837,	2,350 35	Dec. 8,	" do.		400 00
To accounts from April 1 to June 30, 1837,	1,967 22	1837. Jan. 12,	" do.		1,212 72
To accounts from July 1 to Sept. 30, 1837,	1,503 52	Feb. 8,	" do.		350 00
1837, Dec. 18, to this sum rec'd of Joseph Howard, U. S. Dist. Att'y.,	52 41	March 11,	" do.		350 00
To accounts from Oct. 1 to Dec. 31, 1837,	1,486 45	April 25,	" do.		1,050 00
1838, March 31, to this sum received of Thos. Eaton, P. M. Bath, Me	976 30	Oct. 21,	" draft No. 521		584 63
1838, May 4, to this sum received of S. Littlefield P. M. Bridgton, Me.,	34 36	Dec. 6,	" " " 986		10 23
		" "	" " " 988		1,677 22
		" 21,	" " " 1173		821 51
		" 23,	" " " 1255		8 02
		" "	" " " 1256		25 50
		" "	" " " 1257		12 76
		" "	" " " 1259		144 91
		" 30,	" " " 1514		25 04
		" "	" " " 1523		12 04
		" "	" " " 1525		130 15
		" "	" " " 1532		130 97
		" "	" " " 1749		88 70
Carried forward,	12,352 45		Carried forward,		9,040 81
To am't brought forward	12,352 45	1838. Jan'y 22,	By am't bro't forward,		9,040 81
" account from Jan'y 1 to March 31, 1838,	1,717 13	" "	" draft, No. 1967		7 16
1838, June 2d, to this sum received of Joseph Howard, United States District Attorney,	72 83	" "	" " " 1974		337 65
		" "	" " " 1993		37 60
		" 25,	" " " 2047		235 48
To account from April 1 to June 30, 1838,	1,328 20	Feb'y 1,	" " " 2261		212 65
To account from July 1 to Sept. 30, 1838,	1,201 72	" "	" " " 2263		484 16
1838, Oct. 3, to this sum received of Joseph E. Foxcroft, P. M. New Gloucester, Me.	20 52	" "	" " " 2265		22 15
		" "	" " " 2268		15 27
		" "	" " " 2269		18 47
1838, Oct. 26, to this sum received of Jabez Cushman, Postmaster, Upper Yarmouth, Me.	2 14	" 2,	" " " 2284		7 47
To account from Oct. 1 to Dec. 31, 1838,	1,303 46	" 14,	" " " 2662		50 00
To account from Jan. 1 to March 31, 1839,	1,552 63	" 27,	" " " 2932		170 14
Jan. 15, 1839, to this sum received of Jos. Howard, U. S. District Attorney, being the am't of a fine recovered for a violation of the Post Office law,	5 00	" "	" " " 2946		105 96
		March 24,	" " " 3464		248 03
		April 23,	" " " 3724		1,000 00
		" 28,	" " " 3922		30 68
		" "	" " " 3927		25 00
		" "	" " " 3924		227 56
		May 3,	" " " 4038		14 22
		" 15,	" " " 4451		36 52
		" 25,	" " " 4666		248 00
		June 7,	" " " 4844		200 00
		August 6,	" " " 5704		16 27
		" "	" " " 5716		5 27
		" "	" " " 5723		302 69
		" "	" " " 5753		220 99
		" 30,	" " " 6521		143 46
		Sept. 3,	" " " 6571		600 00
		" 18,	" " " 7000		16 60

DR. *Thomas Todd, late Postmaster, Portland, Me., in account with the United States.* CR.

1839, Feb. 21, to this sum received of Jabez Cushman, Postmaster, Upper Yarmouth, Me. . .	2 05	Sept. 19,	By draft, No. 7011	79	11
		May 16,	" Cash, ...	11	27
		Nov. 21,	" draft, No. 8173	19	74
		" 28,	" " " 8384	103	30
		Dec'r 6,	" " " 8496	344	95
		" "	" " " 8497	17	29
		" 7,	" " " 8533	151	48
		" 8,	" " " 8777	95	54
		1839.			
		Jan'y 28,	" " " 9204	1,000	00
		Feb'y 4,	" " " 9310	6	36
		" "	" " " 9311	15	60
		" "	" " " 9312	7	46
		" "	" " " 9313	146	19
		" "	" " " 9314	35	10
		" "	" " " 9319	250	00
		" 5,	" " " 9329	23	61
		" "	" " " 9332	6	30
		March 14,	" " " 292	61	02
Carried forward, ...	19,558 13		Carried forward, ...	16,454	58
To am't brought forward,	19,558 13	1839.	By am't brought forward,	16,454	58
" account from April 1 to June 30, 1839, ...	1,165 14	April 24,	" draft No. 1051	126	05
		" "	" " " 1058	6	91
To account from July 1 to Sept. 30, 1839, ...	942 11	" "	" " " 1059	12	64
		" "	" " " 1060	6	76
		" "	" " " 1061	21	11
		" "	" " " 1062	66	59
		May 7,	" " " 1362	146	81
		" "	" " " 1363	362	68
		" 8,	" " " 1371	73	84
		" "	" " " 1398	35	00
		June 4,	" " " 2177	1,070	12
		" 26,	" " " 2747	270	78
		July 29,	" " " 3125	4	37
		" "	" " " 3126	11	72
		" "	" " " 3127	6	27
		August 2,	" " " 3282	114	36
		" "	" " " 3283	156	46
		" 5,	" " " 3291	82	07
			Balance, ...	2,637	26
	$ 21,665 38			$21,665	38
To Balance, ...	2,637 36				
" int. f'm Sep. 30. 1839,					

I certify, that the foregoing is a true statement of the account of Thomas Todd, late postmaster at Portland, Maine, as audited and adjusted at this office.

In testimony whereof I have hereunto subscribed my name, and caused to be affixed my seal of office, at Washington, this [L. S.] twentieth day of May, in the year one thousand eight hundred and forty.

C. K. GARDNER,
Auditor of the Treasury for the Post Office Department.

U. S. district court, Maine district, August 16. Adj't. Case U. States vs. Thomas Todd, Nathan Nutter, H. H. Boody:

And now said Nutter and Boody come and defend the wrong and injury, when, where, &c., and say, reserving right, by leave of court, to give all special matter in evidence under a brief statement hereunto subjoined, that the said supposed writing obligatory in the plaintiff's first count mentioned, is not their deed, in the manner and form as declared; and of this put themselves upon the country.

By their attorney, FRANCIS O. J. SMITH.

And the plaintiffs likewise.

By JOHN HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say: That they did, on the 15th of December, 1834, give the plaintiffs a bond in the penal sum of twelve thousand dollars, in conjunction with, and as sureties of, said Todd, jointly and severally, (which bond said defendants admit has been lost and destroyed,) setting forth that said Todd had been appointed postmaster at Portland, and conditioned as follows, in substance, to wit, for the faithful performance of the duties of said office, and to pay over any and all monies accruing to him in said office. That, according to the certified account of said Todd with the Post Office Department above mentioned, the amount received by said Todd, in monies to be accounted for by him to the plaintiffs from the date last aforesaid, December 15, 1834, until the 2d day of July, 1836, when, as said defendants aver, his said commission expired, and they became released from all further or other doings of said Todd under said bond, was eleven thousand five hundred and two dollars and sixty-seven cents, ($11,502 67.) And that the amount of the payments of said Todd to the plaintiffs, on account of said receipts, during said period, was ten thousand three hundred and two dollars and seventy-three cents, (10,302 73;) exhibiting a default of one thousand one hundred ninety-nine dollars and ninety-four cents, ($1,199 94.) And that for said default no suit was instituted by said plaintiffs against said Nutter and Boody, as the sureties of said Todd, within two years next succeeding the accruing of said default, nor until the 1st day of June, A. D. 1840; whereby, and in consequence whereof, said defendants, as the sureties of said Todd, were wholly exonerated and discharged from all liability to the plaintiffs therefor, or under said bond. And said defendants fur-

ther say, they have kept and fulfilled all the covenants and obligations of said bond according to the true intendment thereof.

And for further plea the said Nutter and Boody say, that reserving right to give special matter in evidence by leave of court, under a brief statement as aforesaid, that the supposed writing obligatory in the second count of the plaintiff's declaration mentioned is not their deed, and of this put themselves upon the country.

By their attorney, FRANCIS O. J. SMITH.

And the plaintiff likewise.

By J. HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say: That said Todd was appointed by the President, by and with the advice and consent of the Senate of the United States, postmaster at said Portland, on the second day of July, A. D. 1836, and said defendants did give a joint and several bond with said Todd, as the sureties of said Todd, on the day of July, 1836, conditioned in substance as follows, to wit, for the faithful discharge of the duties of said office by the said Todd, and to pay over any and all monies that should accrue to him *is* said office; and the said defendants admit that said bond was destroyed by fire on the 15th of December, 1836. And said defendants say, that the amount of the receipts of said Todd in said office, during the existence of said bond, that is to say, from said last appointment until the 9th of January, 1837, when a new bond was given by said Todd, was three thousand nine hundred seventy-three dollars and fifty cents. And that said Todd's payments to the plaintiffs during said period, and on account of said receipts, was three thousand five hundred ninety-eight dollars forty-nine cents; shewing a deficit or default during said period of three hundred seventy-five dollars and forty-nine cents. And that, for said default, no suit was instituted by the plaintiffs against said Nutter and Boody, as the sureties of said Todd, for more than two years after the accruing of said default, nor until the first day of June, 1840; whereby, and in consequence thereof, said defendants were wholly exonerated and discharged, as the sureties of said Todd, from all liability therefor, or under said bond. And said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond to the intendment thereof.

F. O. J. SMITH.

And the plaintiff likewise.

By J. HOLMES, *U. S. D. A.*

And, for further plea, the said Nutter and Boody say, reserving right to give special matter in evidence under a brief statement, by leave of the court, that the supposed writing obligatory, in the third count of the plaintiffs' declaration aforesaid, is not their deed; and of this put themselves on the country.

By their attorney, FRANCIS O. J. SMITH.

And the plaintiff likewise.

By J. HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say: That, on the 9th day of January, 1837, they did give and execute to the plaintiffs, with and as the sureties of said Todd, a joint and several bond, conditioned in substance for the faithful discharge, by the said Todd, of the duties of the office of postmaster at Portland, and that he would faithfully account for, and pay over to the plaintiffs, all monies accruing to him in said office, and according to the instructions of the Postmaster General. And said defendants aver, that said Todd continued in office thereafter, and faithfully performed all the undertakings for which said defendants, according to the meaning and true intendment of said bond, became his sureties. And the defendants further aver, that the several sums certified by the Auditor of the Post Office Department as having been received, and still due the plaintiffs, by said Todd, to wit, under date of Dec. 18, 1837, received of—

Joseph Howard, or N. Wilcox - - - - -	$52 39
31 March, 1838, received of Thomas Eaton, postmaster at Bath, Maine - - - - - -	976 30
4 May, 1838, received of J. Littlefield, postmaster at Bridgtown, Maine - - - - - -	34 38
2d June, 1838, this sum of the U. S. district attorney -	72 83
Received of J. E. Foxcroft, New Gloucester, P. M.	20 52
15 January, 1839, to fines - - - -	5 00
Received of Jabez Cushman - - -	2 14
21 February, 1839, received of J. Cushman - -	2 05
Amounting to - - - - - -	$1,165 61

were paid to the said Todd, without the authority or warrant of law, and without appertaining to the duties of his office; and for the payment of which said defendants, to wit, the said Nutter and Boody, are in no wise liable to the plaintiffs; and that the said Todd's defaults, in relation to several of said sums, amounting to $1,063 07, accrued more than two years before any suit was instituted by the plaintiffs against said defendants for the same, and that said defendants are not in any wise liable or holden therefor under said bond. And that, without said sum of $1,165 61, said Todd's receipts, after the date of said bond in said office, amounted to sixteen thousand five hundred seventeen dollars ninety-three cents, ($16,517 93;) and his payments to the plaintiffs during the same period amounted to sixteen thousand six hundred twenty-one dollars seventy-one cents, (16,621 71;) shewing an excess of payment of one hundred three dollars seventy-eight cents, ($103 78.)

And said defendants aver, that for all of said money alleged to be received by said Todd during his said continuance in office, accruing more than two years before the commencement of the plaintiffs' action against them, said defendants are in no wise liable or holden to pay the

plaintiffs. And the said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond, according to the true intendment thereof.

F. O. J. SMITH, *Attorney*,
By J. HOLMES, *U. S. D. A.*

UNITED STATES
vs.
THOMAS TODD and als.

The jury find that, as to the first and second counts in the plaintiffs' writ, the defendants did execute the bonds therein mentioned, but that the same have been paid and satisfied; and they further find, that as to the bond declared on in the third count in the plaintiffs' writ, that the same is the proper deed of the defendants; and that, for a breach of the condition thereof, the said defendants do owe the plaintiffs the sum of twenty-six hundred thirty-seven dollars and twenty-six cents debt, and one hundred and ninety-two dollars and fifty cents interest; and they accordingly assess damages for the plaintiffs in the sum of twenty-eight hundred and twenty-nine dollars and seventy-six cents.

PHIN'S DRINKWATER, *Foreman.*

MAINE DISTRICT, *ss:*

At a district court of the United States, begun and holden at Wiscasset, within and for Maine district, on the first Tuesday, being the seventh day of September, in the year of our Lord one thousand eight hundred and forty-one, before the honorable Ashur Ware, judge of said court:

THE UNITED STATES OF AMERICA, plaintiffs,
vs.
THOMAS TODD, esquire, Henry H. Boody, and Nathan Nutter, gentlemen, all of Portland, in our said district, defendants.

In a plea of debt, for that the said Todd, Boody, and Nutter, at said Portland, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-four, by their writing obligatory of that date, sealed with their seals, and having been destroyed by fire cannot here in court be produced, dated the day and year last aforesaid, bound themselves unto William T. Barry, late Postmaster General of said States, or his successor in office, in the sum of twelve thousand dollars, to be paid to said Barry, or his successor in said office, by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, by their other writing obligatory of that date, by them signed and sealed with their seals, and having been lost and destroyed by fire cannot here in court be produced, bound themselves

unto said States in the other sum of ten thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, by their other writing obligatory of that date, sealed with their seals, and here in court to be produced, dated the day and year aforesaid, bound themselves unto said States in the other sum of eight thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand.

Yet, though requested, said Todd, Boody, and Nutter, or either of them, have not paid said sums, but owe and detain the same, to the damage of the said plaintiffs, as they say, the sum of five thousand dollars.

This action was entered at September term, in the year of our Lord one thousand eight hundred and forty, and was thence continued from term to term to June term last past, and at the adjournment of said term, holden on the sixteenth day of August last past, the following pleas were filed by Francis O. J. Smith, attorney for said Nutter and Boody, viz:

And now said Nutter and Boody come and defend the wrong and injury, when, where, &c., and say, reserving right, by leave of court, to give all special matter in evidence, under a brief statement hereunto subjoined, that the said supposed writing obligatory in the plaintiffs' first count mentioned is not their deed, in the manner and form as declared, and of this put themselves upon the country.

By their attorney, F. O. J. SMITH.

And the plaintiffs likewise.

By JOHN HOLMES, *U. S. D. A.*

And for brief statement as aforesaid, said defendants say, that they did, on they 15th of December, 1834, give the plaintiffs a bond in the penal sum of twelve thousand dollars, in conjunction with and as the sureties of said Todd, jointly and severally, (which bond, said defendants admit, has been lost and destroyed,) setting forth, that said Todd had been appointed postmaster at Portland, and conditioned as follows, in substance, to wit, for the faithful performance of the duties of said office, and to pay over any and all moneys accruing to him in said office; that, according to the certified account of said Todd with the Post Office Department above mentioned, the amount received by said Todd in moneys to be accounted for by him to the plaintiffs from the date last aforesaid, December 15, 1834, until the 2d day of July, 1836, when, as said defendants aver, his said commission expired, and they became released from all further or other doings of said Todd under said bond, was eleven thousand five hundred and two dollars and sixty-seven cents. And that the amount of the payments of the said Todd to the plaintiffs, on account of said receipts during said period, was ten thousand three hundred and two dollars and seventy-three cents, exhibiting a default of one thousand one hundred ninety-nine dollars and ninety-four cents. And that for said default no suit was instituted by said plaintiffs against said Nutter and Boody, as the sureties of said Todd, within

two years next succeeding the accruing of said default, nor until the 1st day of June, A. D. 1840; whereby, and in consequence whereof, said defendants, as the sureties of said Todd, were wholly exonerated and discharged from all liability to the plaintiffs therefor, or under said bond. And said defendants further say, that they have kept and fulfilled all the covenants and obligations of said bond, according to the true intendment thereof.

And for further plea the said Nutter and Boody say, that reserving right to give special matter in evidence, by leave of court, under a brief statement as aforesaid, that the supposed writing obligatory in the second count of the p aintiff's declaration mentioned is not their deed, and of this put themselves upon the country.

By their attorney, F. O. J. SMITH.

And the plaintiffs likewise.

By J. HOLMES, *U. S. D. A.*

And for brief statement as aforesaid said defendants say, that said Todd was appointed by the President, by and with the advice and consent of the Senate of the United States, postmaster at said Portland, on the 2d day of July, A. D. 1836, and said defendants did give a joint and several bond with said Todd, as the sureties of said Todd, on the day of July, 1836, conditioned, in substance, as follows, to wit, for the faithful discharge of the duties of said office, by the said Todd, and to pay over any and all moneys that should accrue to him in said office; and the said defendants admit that said bond was destroyed by fire on the 15th of December, 1836. And said defendants say, that the amount of the receipts of said Todd, in said office, during the existence of said bond, that is to say, from said last appointment until the 9th of January, 1837, when a new bond was given by said Todd, was three thousand nine hundred seventy-three dollars and fifty cents. And that said Todd's payments to the plaintiffs during said period, and on account of said receipts, was three thousand five hundred ninety-eight dollars forty-nine cents, shewing a deficit or default during said period of three hundred seventy-five dollars forty-nine cents. And that for said default no suit was instituted by the plaintiffs against said Nutter and Boody, as the sureties of said Todd, for more than two years after the accruing of said default, nor until the first day of June, 1840; whereby, and in consequence thereof, said defendants were wholly exonerated and discharged, as the sureties of said Todd, from all liability therefor, or under said bond. And said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond to the intendment thereof.

And for further plea the said Nutter and Boody say, reserving right to give special matter in evidence under a brief statement, by leave of the court, that the supposed writing obligatory, in the third count of the plaintiffs' declaration aforesaid, is not their deed; and of this put themselves on the country.

By their attorney, FRANCIS O. J. SMITH.

And the plaintiffs likewise.

By J. HOLMES, *U. S. D. A.*

And for brief statement as aforesaid said defendants say, that, on the ninth day of January, 1837, they did give and execute to the plaintiffs, with and as the sureties of said Todd, a joint and several bond, conditioned in substance for the faithful discharge by the said Todd of the duties of the office of postmaster at Portland, and that he would faithfully account for and pay over to the plaintiffs all moneys accruing to him in said office, and according to the instructions of the Postmaster General; and said defendants aver, that said Todd continued in office thereafter, and faithfully performed all the undertakings for which said defendants, according to the meaning and true intendment of said bond, became his sureties.

And the defendants further aver, that the several sums certified by the auditor of the Post Office Department as having been received and still due the plaintiffs by said Todd, to wit, of Joseph Howard, Thomas Eaton, J. Littlefield, district attorney, J. E. Foxcroft, Jabez Cushman, to fines, and J. Cushman, amounting to eleven hundred sixty-five dollars and sixty-one cents, were paid to the said Todd, without the authority or warrant of law, and without appertaining to the duties of his office; and for the payment of which said defendants, to wit, the said Nutter and Boody, are in no wise liable to the plaintiffs; and that the said Todd's default in relation to several of said sums, amounting to $1,063 07, accrued more than two years before any suit was instituted by the plaintiffs against said defendants for the same, and that said defendants are not in any wise liable or holden therefor under said bond. And that, without said sum of $1,165 61, said Todd's receipts, after the date of said bond, in said office, amounted to sixteen thousand five hundred seventeen dollars ninety-three cents; and his payments to the plaintiffs, during the same period, amounted to sixteen thousand six hundred twenty-one dollars seventy-one cents, shewing an excess of payment of one hundred three dollars seventy-eight cents.

And said defendants aver, that for all of said money alleged to be received by said Todd during his said continuance in office, accruing more than two years before the commencement of the plaintiffs' action against them, said defendants are in no wise liable or holden to pay the plaintiffs.

And the said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond, according to the true intendment thereof.

F. O. J. SMITH, *Att'y.*

And at the said adjournment of said court, the said Thomas Todd, although solemnly called to come into court, does not appear, but makes default.

Whereupon, after a full hearing of the evidence, produced as well on behalf of the said Nutter and Boody as on the part of the plaintiffs, and the argument of the respective counsel thereupon, said cau is by

the court committed to a jury, duly impannelled and sworn, who, after deliberation thereon, return their verdict as follows, to wit:

"The jury find, that as to the first and second counts in the plaintiffs' writ, the defendants did execute the bonds therein mentioned, but that the same have been paid and satisfied; and they further find, that as to the bond declared on in the third count in the plaintiffs' writ, that the same is the proper deed of the defendants; and that for a breach of the condition thereof the said defendants do owe the plaintiffs the sum of twenty-six hundred thirty-seven dollars and twenty-six cents debt, and one hundred and ninety-two dollars and fifty cents interest; and they accordingly assess damages for the plaintiffs in the sum of twenty-eight hundred and twenty-nine dollars and seventy-six cents."

And thereupon, said cause was thence continued to the present term; and now, all which being seen and understood, it is therefore considered by the court here, that the said United States recover against the said defendants the sum of eight thousand dollars, being the penalty demanded; but that execution issue for twenty-eight hundred and twenty-nine dollars and seventy-six cents, the sum now equitably due to the plaintiffs, with costs of suit taxed at one hundred and nine dollars and six cents; and also for such other and further sum as the legal interest upon the said principal, at and after the rate of six per centum per annum, shall amount to, computing from said seventh day of September instant, unto the time when said judgment shall be fully discharged and satisfied.

Recorded by— JOHN MUSSEY, *Clerk.*

MAINE DISTRICT, *ss:*

At a circuit court of the United States, for the first circuit, begun and holden at Portland, within and for said district, on Friday, the first day of May, A. D. one thousand eight hundred and forty-six, and by adjournment thereof on Tuesday, the seventh day of July, in the same year:

Present, the honorable Levi Woodbury, associate justice of the Supreme Court; and the honorable Ashur Ware, district judge.

HENRY H. BOODY and al., in error,
vs.
THE UNITED STATES OF AMERICA.

Complain Henry H. Boody and Nathan Nutter, both of Portland, within said district, that in the record of a suit, wherein the United States of America were plaintiffs, and your complainants, together with one Thomas Todd, also of said Portland, were defendants, in the district court of the United States, holden at Wiscasset, within and for said Maine district, before the honorable Ashur Ware, judge of said court, on the first Tuesday, being the seventh day of September, A. D. eighteen hundred and forty-one, whereof an authenticated transcript in the said circuit court shall be produced, the following manifest error hath intervened, to wit, that the judgment rendered in the said suit is:

"That the said United States recover against the said defendants the sum of eight thousand dollars, being the penalty demanded; but that execution issue for twenty-eight hundred and twenty-nine dollars and seventy-six cents, the sum now equitably due to the plaintiffs, with costs of suit, taxed at one hundred and nine dollars and six cents; and also for such other and further sum as the legal interest upon the said principal, at and after the rate of six per cent. per annum, shall amount to, computing from said seventh day of said September, unto the time when said judgment shall be fully discharged and satisfied."

Whereas it ought to be, that the said United States take nothing by their writ against the said Boody and Nutter. Wherefore, the said Boody and Nutter pray the consideration of the justices aforesaid, and that the judgment aforesaid, and every part thereof, may be reversed.

The authenticated transcript of the record of the district court is as follows, viz:

MAINE DISTRICT, *ss:*

At a district court of the United States, begun and holden at Wiscasset, within and for Maine district, on the first Tuesday, being the seventh day of September, in the year of our Lord one thousand eight hundred and forty-one, before the honorable Ashur Ware, judge of said court.

THE UNITED STATES OF AMERICA, plffs.,
vs.
THOMAS TODD, esq'r, Henry H. Boody, and Nathan Nutter, gentlemen, all of Portland, in our said district, defts.

In a plea of debt, for that the said Todd, Boody, and Nutter, at said Portland, on the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-four, by their writing obligatory of that date, sealed with their seals, and having been destroyed by fire cannot here in court be produced, dated the day and year last aforesaid, bound themself unto William T. Barry, late Postmaster General of said States, or his successor in office, in the sum of twelve thousand dollars, to be paid to said Barry, or his successor in said office, by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and thirty-six, by their other writing obligatory of that date, by them signed, and sealed with their seals, and having been lost and destroyed by fire cannot here in court be produced, bound themselves unto said States, in the other sum of ten thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand.

Also, for that the said Todd, Boody, and Nutter, at said Portland, on the ninth day of January, in the year of our Lord one thousand eight hundred and thirty-seven, by their other writing obligatory of that date, sealed with their seals, and here in court to be produced, dated

698.

the day and year aforesaid, bound themselves unto said States in the other sum of eight thousand dollars, to be paid to said States by said Todd, Boody, and Nutter, on demand.

Yet, though requested, said Todd, Boody and Nutter, or either of them, have not paid said sums, but owe and detain the same, to the damage of the said plaintiffs, as they say, the sum of five thousand dollars.

This action was entered at September term, in the year of our Lord one thousand eight hundred and forty, and was thence continued from term to term to June term last past; and at the adjournment of said term, holden on the sixteenth day of August last past, the following pleas were filed by Francis O. J. Smith, attorney for said Nutter and Boody, viz:

And now said Nutter and Boody come and defend the wrong and injury, when, where, &c., and say, reserving right by leave of court to give all special matter in evidence, under a brief statement hereunto subjoined, that the said supposed writing obligatory, in the plaintiffs' first count mentioned, is not their deed, in the manner and form as declared, and of this [they] put themselves upon the country, by their attorney,

F. O. J. SMITH.

And the plaintiffs likewise, by

JOHN HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say, that they did, on the 15th of December, 1834, give the plaintiffs a bond, in the penal sum of twelve thousand dollars, in conjunction with, and as the sureties of, said Todd, jointly and severally, (which bond said defendants admit has been lost and destroyed,) setting forth that said Todd had been appointed postmaster at Portland, and conditioned as follows, in substance, to wit, for the faithful performance of the duties of said office, and to pay over any and all monies accruing to him in said office; that, according to the certified account of said Todd with the Post Office Department, above mentioned, the amount received by said Todd in monies, to be accounted for by him to the plaintiffs from the date last aforesaid, December 15, 1834, until the 2d day of July, 1836, when, as said defendants aver, his said commission expired, and they became released from all further or other doings of said Todd under said bond, was eleven thousand five hundred and two dollars and sixty-seven cents; and that the amount of the payments of said Todd to the plaintiffs, on account of said receipts during said period, was ten thousand three hundred and two dollars and seventy-three cents, exhibiting a default of one thousand one hundred ninety-nine dollars and ninety-four cents; and that for said default no suit was instituted by said plaintiffs against said Nutter and Boody, as the sureties of said Todd, within two years next succeeding the accruing of said default, nor until the first day of June, A. D. 1840; whereby, and in consequence whereof, said defendants, as the sureties of said Todd, were wholly exonerated and discharged

from all liability to the plaintiffs therefor, or under said bond. And said defendants further say, that they have kept and fulfilled all the covenants and obligations of said bond, according to the true intendment thereof.

And for further plea the said Nutter and Boody say, that reserving right to give special matter in evidence by leave of court, under a brief statement as aforesaid, that the supposed writing obligatory in the second count of the plaintiffs' declaration mentioned is not their deed, and of this put themselves upon the country, by their attorney,

F. O. J. SMITH.

And the plaintiffs likewise, by

J. HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say, that said Todd was appointed by the President, by and with the advice and consent of the Senate of the United States, postmaster at said Portland, on the second day of July, A. D. 1836, and said defendants did give a joint and several bond with said Todd, as the sureties of said Todd, on the day of July, 1836, conditioned in substance, as follows, to wit, for the faithful discharge of the duties of said office by the said Todd, and to pay over any and all monies that should accrue to him in said office; and the said defendants admit that said bond was destroyed by fire on the 15th of December, 1836. And said defendants say, that the amount of the receipts of said Todd in said office, during the existence of said bond, that is to say, from said last appointment until the 9th of January, 1837, when a new bond was given by said Todd, was three thousand nine hundred seventy-three dollars and fifty cents; and that said Todd's payments to the plaintiffs, during said period, and on account of said receipts, was three thousand five hundred ninety-eight dollars forty-nine cents, shewing a deficit, or default, during said period, of three hundred seventy-five dollars forty-nine cents; and that for said default no suit was instituted by the plaintiffs against said Nutter and Boody, as the sureties of said Todd, for more than two years after the accruing of said default, nor until the first day of June, 1840; whereby, and in consequence thereof, said defendants were wholly exonerated and discharged, as the sureties of said Todd, from all liability therefor, or under said bond. And said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond to the intendment thereof.

And for further plea the said Nutter and Boody say, reserving right to give special matter in evidence, under a brief statement by leave of the court, that the supposed writing obligatory in the third count of the plaintiffs' declaration aforesaid is not their deed, and of this put themselves on the country, by their attorney,

FRANCIS O. J. SMITH.

And the plaintiffs likewise, by

J. HOLMES, *U. S. D. A.*

And, for brief statement as aforesaid, said defendants say, that on the ninth day of January, 1837, they did give and execute to the plaintiffs, with and as the sureties of said Todd, a joint and several bond, conditioned, in substance, for the faithful discharge, by the said Todd, of the duties of the office of postmaster at Portland, and that he would faithfully account for, and pay over to the plaintiffs, all monies accruing to him in said office, and according to the instructions of the Postmaster General; and said defendants aver, that said Todd continued in office thereafter, and faithfully performed all the undertakings for which said defendants, according to the meaning and true intendment of said bond, became his sureties. And the defendants further aver, that the several sums certified by the auditor of the Post Office Department as having been received and still due the plaintiffs by said Todd, to wit, of Joseph Howard, Thomas Eaton, J. Littlefield, district attorney, J. E. Foxcroft, Jabez Cushman, to fines, and J. Cushman, amounting to eleven hundred sixty-five dollars and sixty-one cents, were paid to the said Todd without the authority or warrant of law, and without appertaining to the duties of his office, and for the payment of which said defendants, to wit, the said Nutter and Boody, are in no wise liable to the plaintiffs; and that the said Todd's default, in relation to several of said sums, amounting to $1,063 07, accrued more than two years before any suit was instituted by the plaintiffs against said defendants for the same, and that said defendants are not in any wise liable or holden therefor under said bond; and that without said sum of $1,165 61, said Todd's receipts, after the date of said bond, in said office, amounted to sixteen thousand five hundred seventeen dollars ninety-three cents, and his payments to the plaintiffs, during the same period, amounted to sixteen thousand six hundred twenty-one dollars seventy-one cents; shewing an excess of payment of one hundred three dollars seventy-eight cents.

And said defendants aver, that for all of said money alleged to be received by said Todd during his said continuance in office, accruing more than two years before the commencement of the plaintiffs' action against them, said defendants are in no wise liable or holden to pay the plaintiffs. And the said defendants further say, that they have kept and fulfilled all the covenants and obligations of their said bond, according to the true intendment thereof.

F. O. J. SMITH, *Att'y*.

And at the said adjournment of said court the said Thomas Todd, although solemnly called to come into court, does not appear, but makes default.

Whereupon, after a full hearing of the evidence produced, as well on behalf of the said Nutter and Boody, as on the part of the plaintiffs, and the argument of the respective counsel thereupon, said cause is by the court committed to a jury duly impannelled and sworn, who, after deliberation thereon, return their verdict as follows, to wit: "The jury find that, as to the first and second counts in the plaintiffs' writ, the de-

fendants did execute the bonds therein mentioned, but that the same have been paid and satisfied; and they further find, that as to the bond declared on in the third count in the plaintiffs' writ, that the same is the proper deed of the defendants, and that, for a breach of the condition thereof, the said defendants do owe the plaintiffs the sum of twenty-six hundred thirty-seven dollars and twenty-six cents debt, and one hundred and ninety-two dollars and fifty cents interest; and they accordingly assess damages for the plaintiffs in the sum of twenty-eight hundred and twenty-nine dollars and seventy-six cents.

And thereupon said cause was thence continued to the present term; and now, all which being seen and understood, it is therefore considered by the court here, that the said United States recover against the said defendants the sum of eight thousand dollars, being the penalty demanded; but that execution issue for twenty-eight hundred and twenty-nine dollars and seventy-six cents, the sum now equitably due to the plaintiffs, with costs of suit taxed at one hundred and nine dollars and six cents, and also for such other and further sum as the legal interest upon the said principal, at and after the rate of six per centum per annum, shall amount to, computing from said seventh day of September instant, unto the time when said judgment shall be fully discharged and satisfied.

This action was entered at October term, A. D. 1841, of this court, and was thence continued, from term to term, to the present term; and the said H. H. Boody and al. being present, by T. A. Deblois, their attorney, and the said United States by Augustine Haines, district attorney, the same came on for trial, and was argued by counsel.

All which being seen and understood, it does not appear to the court here that error does exist in the record of the judgment aforesaid, or that the same should be reversed, as alleged by said complainants, but that the same should be affirmed.

It is therefore considered by the court here, that the said judgment of the said district court be, and the same is hereby, affirmed; that the said United States recover against the said Boody, Nutter, and Todd, the said defendants, the sum of eight thousand dollars, penalty in said bond mentioned, and that execution issue for the sum of two thousand eight hundred twenty-nine dollars and seventy-six cents damages, together with accruing interest, from the seventh day of September, A. D. one thousand eight hundred and forty-one, and costs of suit.

UNITED STATES OF AMERICA,
Maine district, ss:

I, John Mussey, clerk of the circuit court of the United States for the first circuit for Maine district, do hereby certify the foregoing pages, numbered from *one* to *sixty-one*, as containing the original writ of error from the Supreme Court, the return, the citation and service, and the copies of the process, proceedings, and judgment rendered in said circuit court at May term, in the year of our Lord one thousand eight hundred and forty-six, in the matter or suit wherein Henry H. Boody and

others were defendants in the district court, and plaintiffs in error in said circuit court, against the United States of America.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said circuit court, at Portland, thirtieth day of September, in the year of our Lord one thousand eight hundred and forty-six.

[L. S.]

JOHN MUSSEY.

Filed December 10, 1846.

A.) Copy of I. L. Kelsey's plan of Township No. 3. R. 13.

(74. Comr)

342

343

No 146

Rhesuncook Lake

Pine Stream

Deer Pond

Roland Pond

Caribou Lake

Ragged Lake

Cross pond

430 a

678 a

568 a

568 a

568 a

291 a

496 a

368 a

670 a

347

657 a

661 a

596 a

1846 No. 164 Cutler vs Rae – between pages 10 & 11.

Plan A. annexed to the Deposition of Alden Gifford G.J.C.—

Note.

The bearings are taken by magnetic compass. The variation at this place about one half point westerly—
The distances are computed from those best acquainted and living on the shore— The bearings were taken by me. The position of the Barque as seen is at low tide; she lying at low water mark. The tide here rises and flows at common tides about eight f't—
The Bank directly abreast of the Barque is from 30 to 40 feet wide in an angle of about 40 degrees covered with young wood.
The shore from low water mark to high water mark is covered with rocks and stones for a mile southerly and a half mile northerly of the wreck—

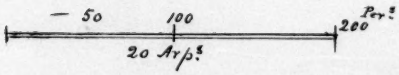
Scale of Statute miles made to correspond with the plan

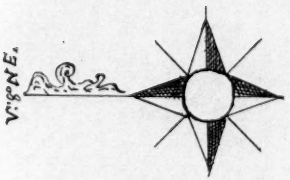
A Sketch of Warren's Cove with the adjacent Coasts by Alden Gifford Oct 27th 1846.

Nº 78.

Luisiana, 1787.

Distrito de Punta Cortado.





terreno Del Dom.o De S M.

S. 400 P.s

Dn Guelo Dunbart

E. 400 P.s

tierra de Dn Clodio Trenonay 1600 arpans quadras de superficie

Dn Clodio Trenonay

Cotina Perchas

E 270

Cipreral

Cepalino

la furcha

Desembarco

llamado de la Sara

Cipres

Cipres

Barancas

Falda

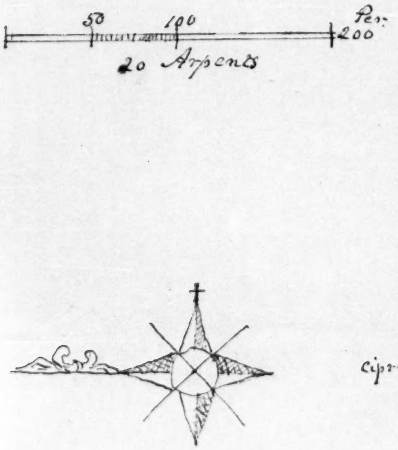
Cañas

Cipreria

Bayu Vulgarmente

Sterling - pa. 14.

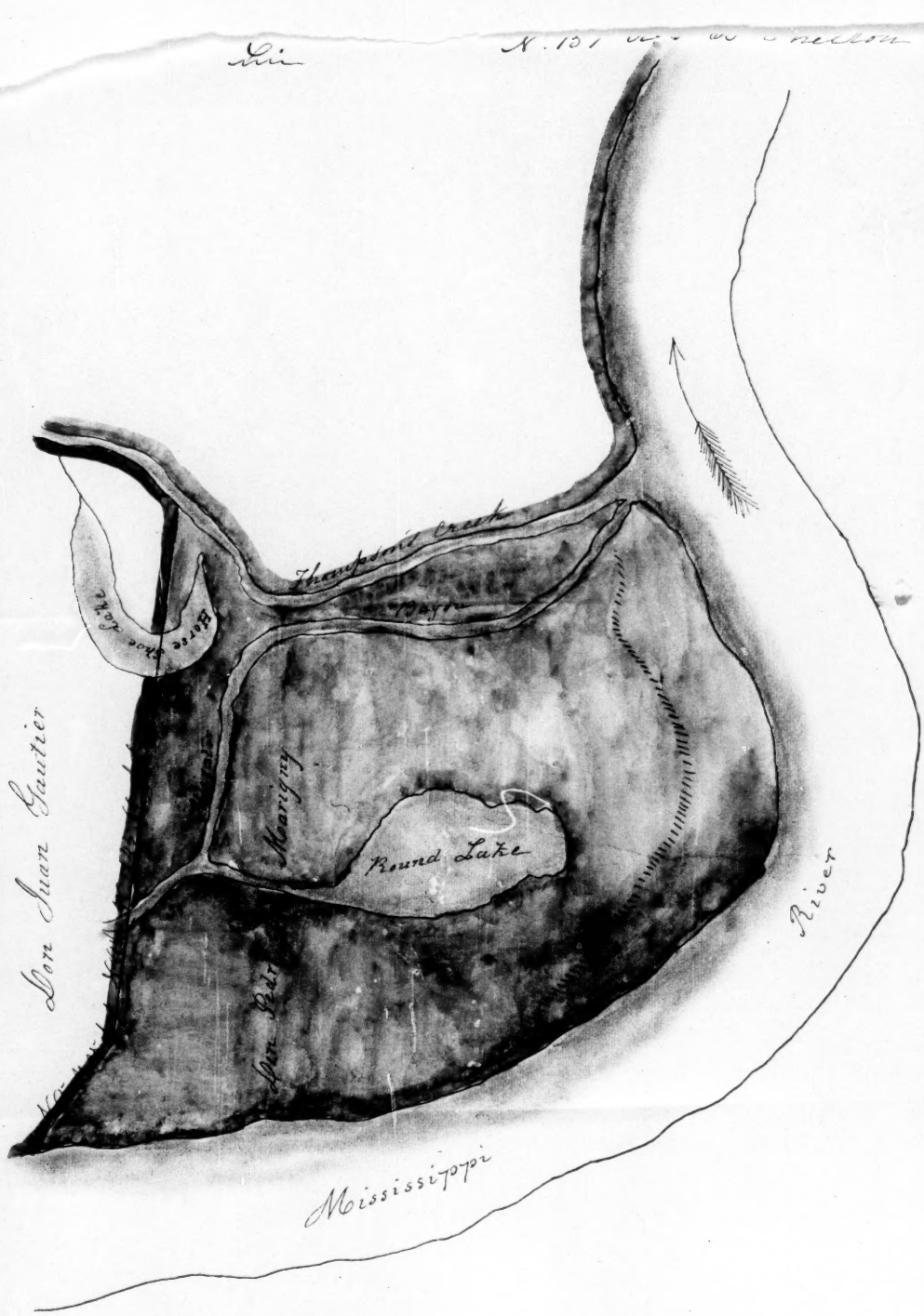
Louisiana 1787
District of Pointe Coupée.



No 3 T. 4 R. 2 W. in Ihotaw-1st, 1st of 13, 9

Diu

T. 4. R. 2. West of the Basis Meridian Land District East of the Island of New Orleans and West of Pearl River.


Thousand Creek
Horse Shoe Lake
Don Juan Gautier
Round Lake
Mississippi
River

RED R.

Upper Mouth

Lower Mouth

ATCHAFALAYA River

Bayou Carillo

PLAN

of Mouths of

Red River

Scale of Miles.

Miss

RED R.

Upper Mouth

Lower Mouth

ATCHAFALAYA River

Bayou Coville

PLAN

Upper Mouth

Lower Mouth

LAN

Mouths of

Mississippi River

PLAN

of Mouths of

Red River

Scale of Miles.

1/4 1/2 3/4 1 1 1/2

Lower Mouth

Atchafalaya River

Bayou Carillo

Miss

AN

uths of

River

Scale of Miles.

3/4 1 1 1/2

B.45

Mississippi Ri

Missouri

T. 5. R. 9 E.

N

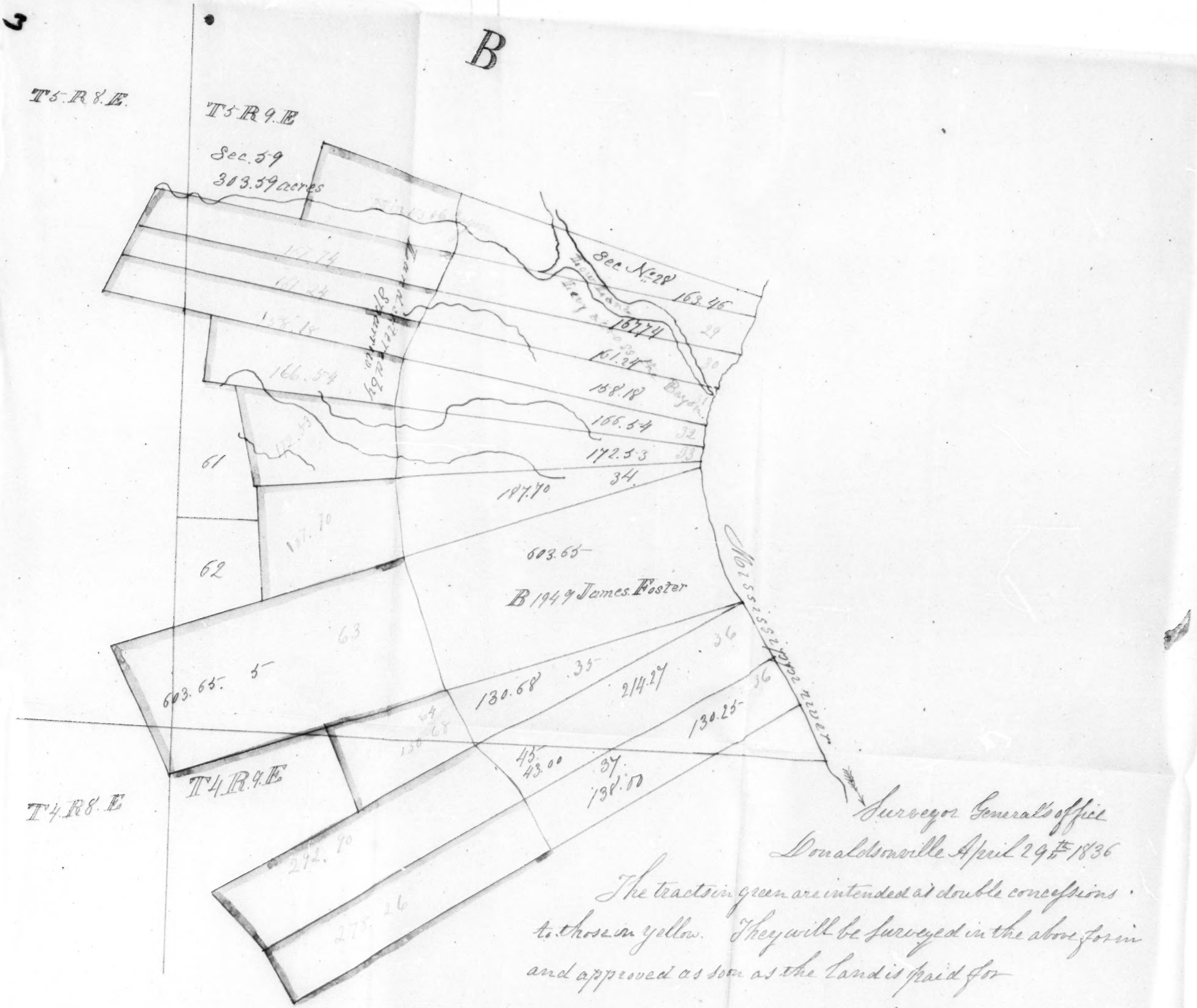
I. A. A. Rolands Register of the Land Office at Opelousas Louisiana District North of Red River do hereby certify this map to be a copy of the one on file in my office and that those tracts or parts of tracts which the names of Francis Sargent, E. Spaulding and E. Whittlesey are written to have been purchased by those persons respectively

(Signed) I. A. A. Rolands
Register

Land Office at Opelousas
Louisiana August 10th 1839

3

B

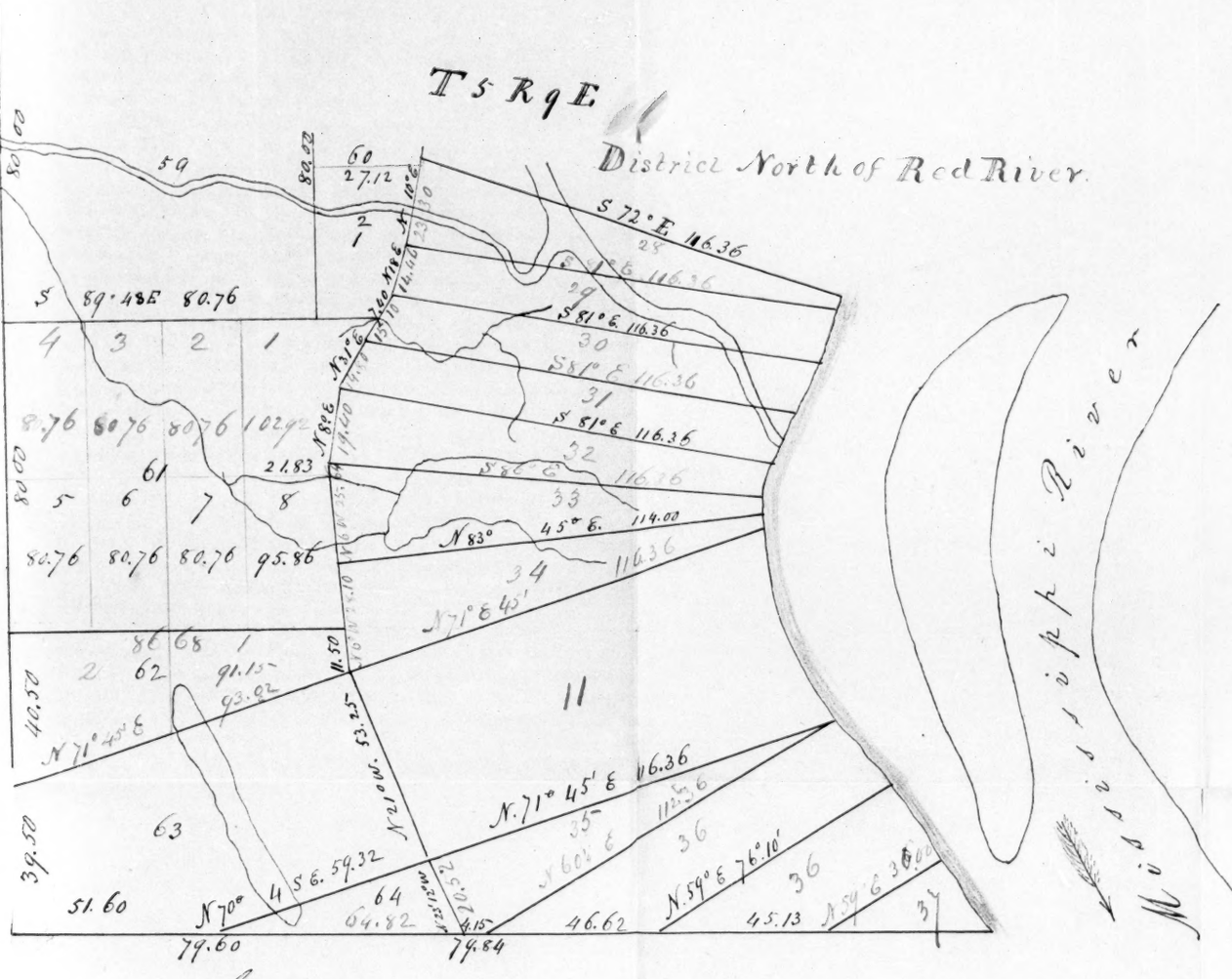


Surveyor Generals office
Donaldsonville April 29th 1836

The tracts in green are intended as double concessions to those in yellow. They will be surveyed in the above form and approved as soon as the land is paid for

(Signed) H. J. Williams
Surveyor General La.

C



There is no evidence in this office, of any such streams or Navigable water as is contemplated by the Law to impair the rights to back concessions, for sections from 27 to 11 as represented in the above diagram -

(Signed) T. L. Newcomb
Surveyor General La

Surveyor Generals office
April 11th 1842.

Table of Contents

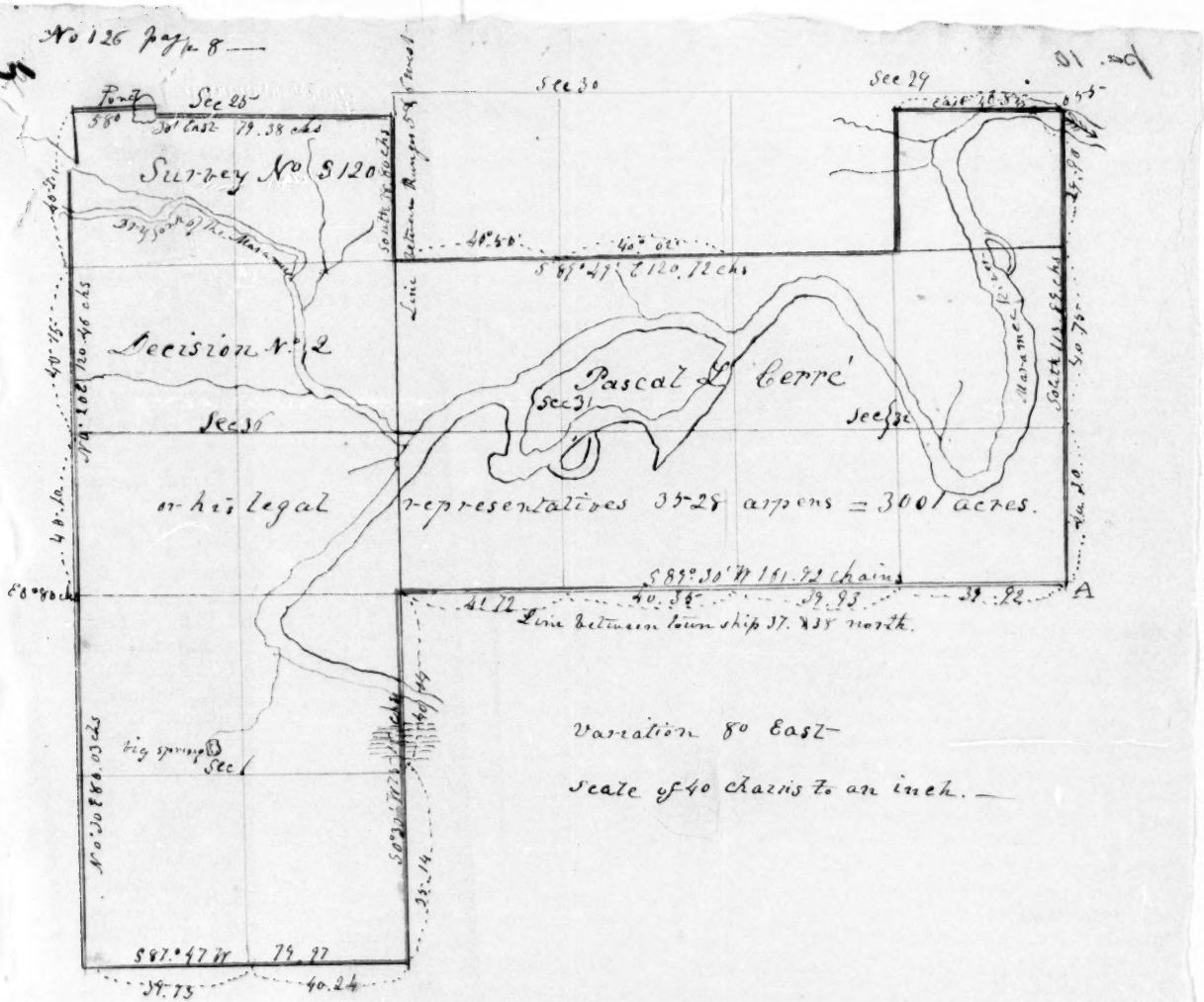
No of Sec.	Area
28	163.46
29	167.74
30	161.24
31	158.18
32	166.54
33	172.53
34	187.70
35	130.68
60	226.98
61	683.34
62	228.27
63	508.47
64	60.47

Claimants Names	Sec	Cert	Area
James Foster	11	B1949	60.365
David B. Morgan	36	B1630	130.25
Peter Surget	37	B142	

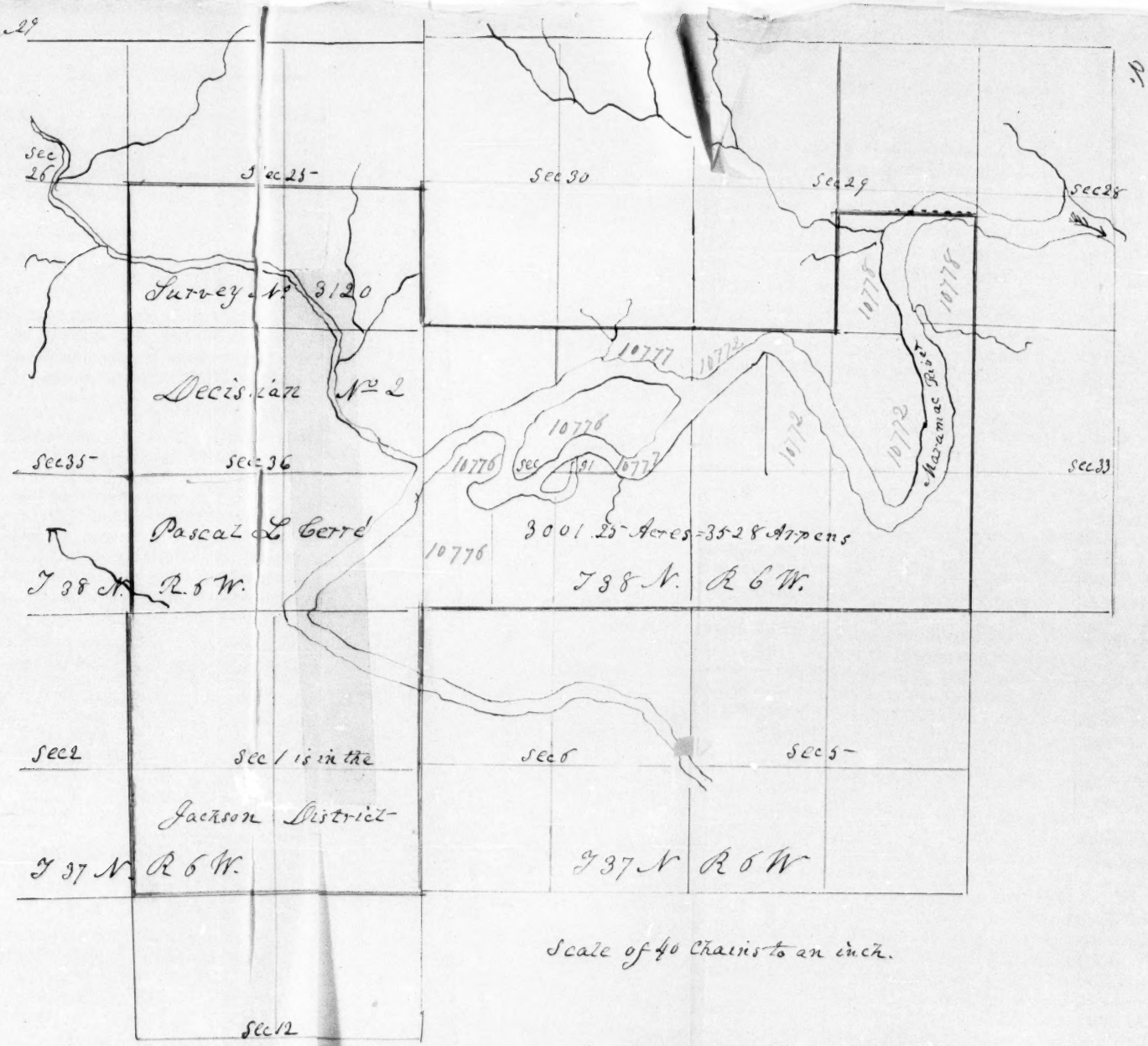
Surveyor Generals office Donaldsonville April 11. 1842

The above is a true sketch from Township 5. Range 9 East of District North of Red River, representing the Sections and claims from 27 to 37, together with the Public Lands back of and adjacent thereto.

(Signed) T. L. Newcomb
Surveyor General La


No 126 page 8
Pond
Sec 25
Survey No 8120
Decision No 2
Sec 30
Sec 29
Sec 31
Sec 32
Pascal L'Terre'
or his legal representatives 35-28 arpens = 300 1/ acres.
Line between township 37. & 38 north.
Variation 8° East
Scale of 40 chains to an inch.
big springs
Sec 1

No. 126 - page 29

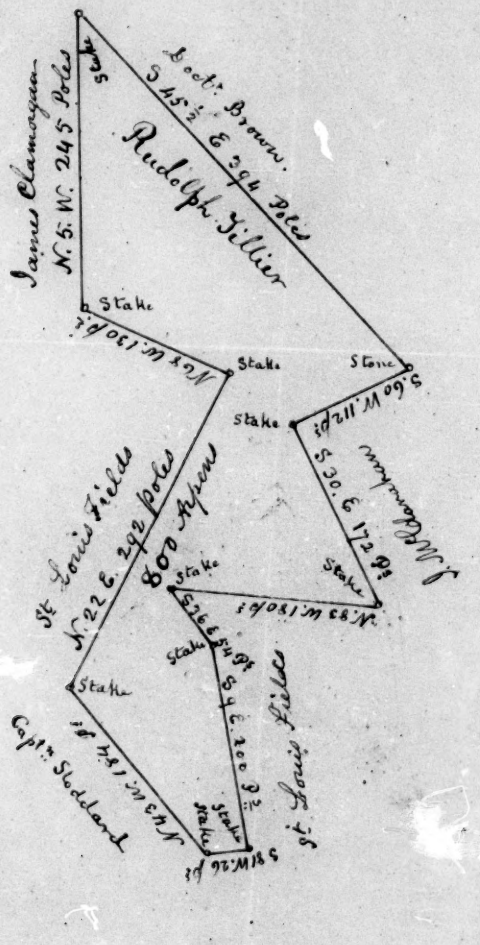


Scale of 40 Chains to an inch.

Townships 45- and 46 North Range 7 East of 5th Principal meridian

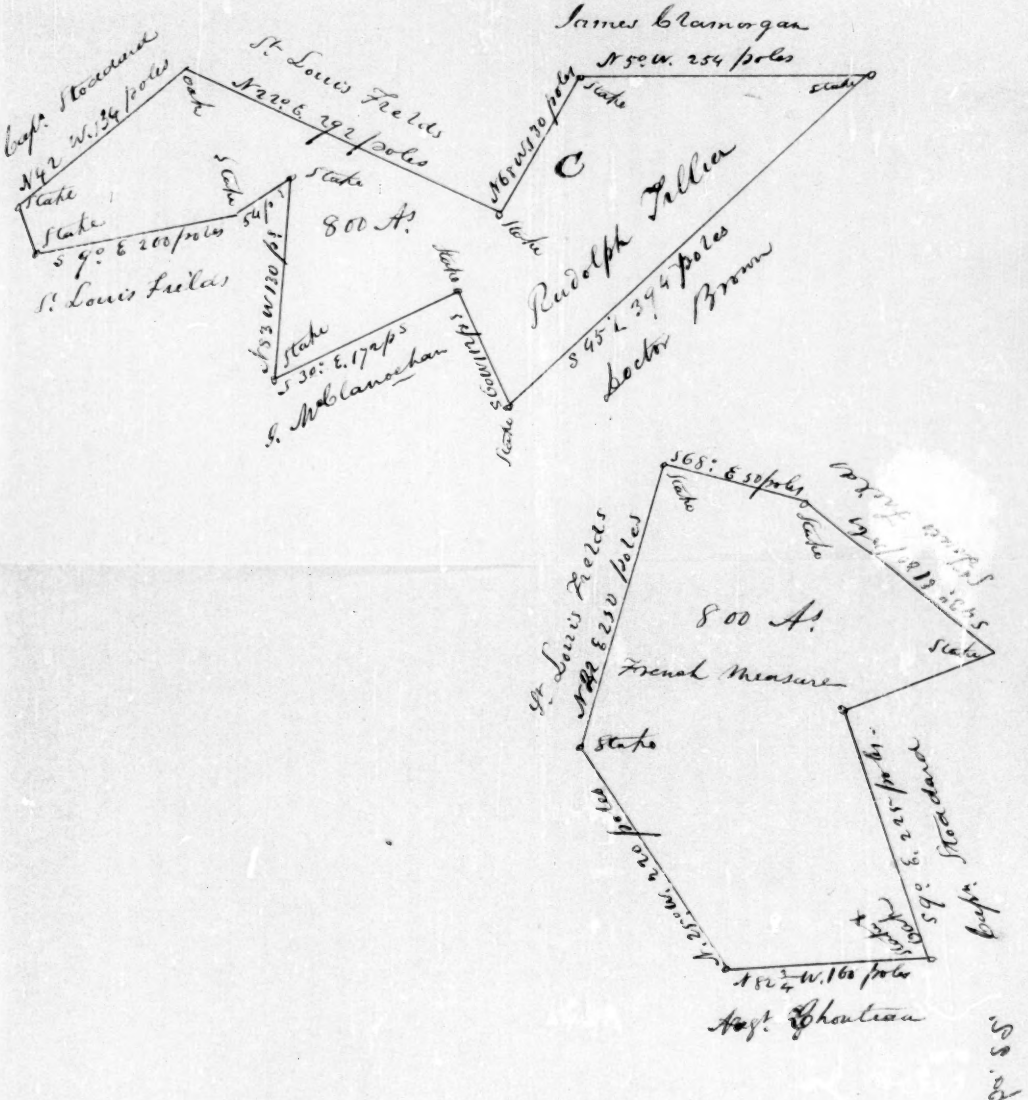
Scale of 20 chains to the inch.

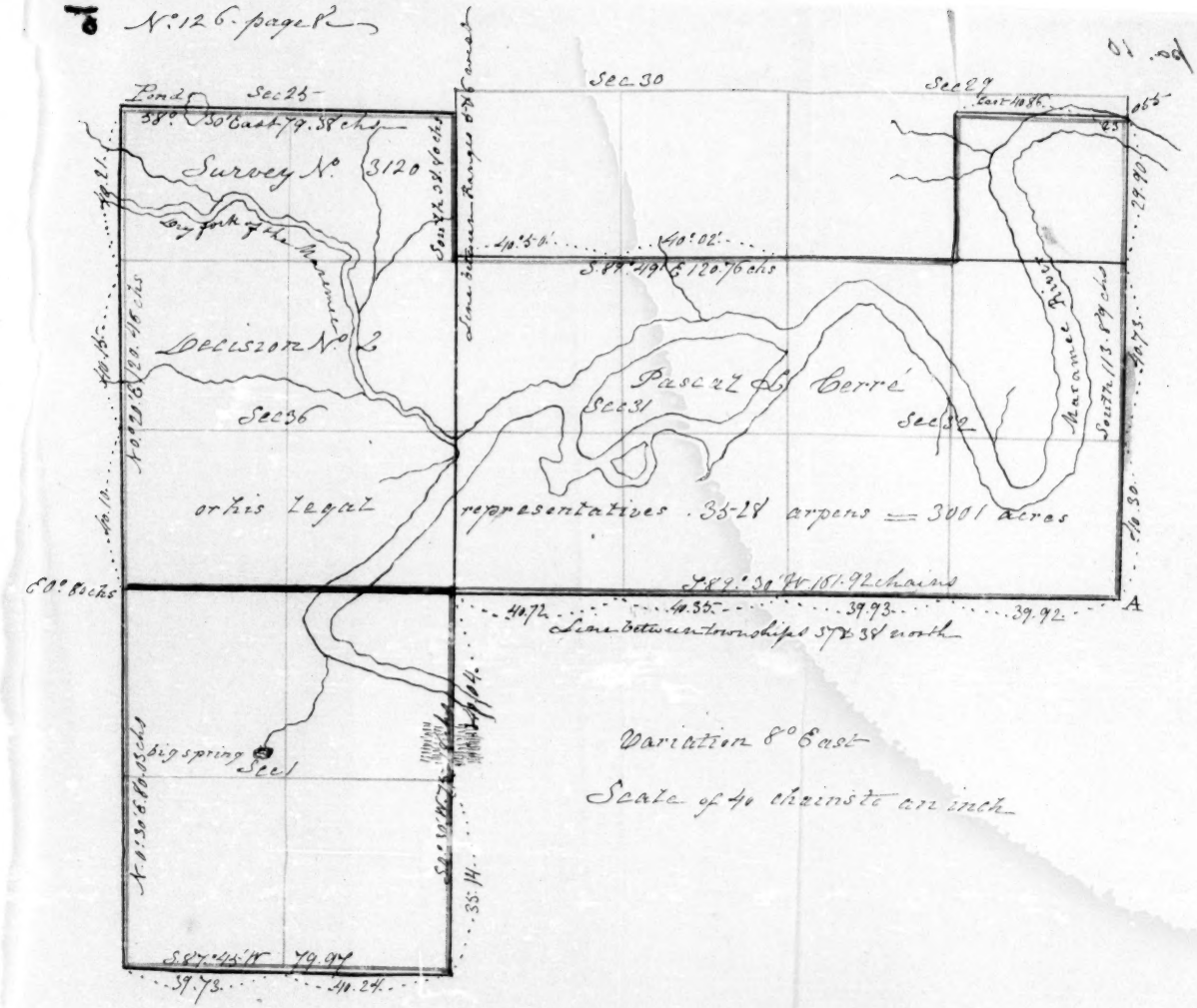
No. 127.
page 10.



Nota - This land lies about
2 miles N.W. of St. Louis -

683 acres 86 Pc


Capt. Stoddard
N42 W. 34 poles
Stake
Stake
S 9° E 200 poles
St. Louis Feelas
St. Louis Feelas
N 22° E. 292 poles
Stake
Stake
Stake
S 53 W 120 poles
S 30° E. 172 poles
Stake
G. McClanachan
Stake
800 As.
James Clamorgan
N 5° W. 254 poles
Stake
Stake
N 69° W 320 poles
Stake
C
Rudolph Tillier
S 45° E. 344 poles
Doctor Brown
S 68° E 50 poles
Stake
Stake
St. Louis Feelas
N 42° E 230 poles
800 As.
French Measure
Stake
Stake
Stake
S 22° E. 220 poles
N 82 3/4 W. 160 poles
Augt. Chouteau
Doctor Farnham
Doctor Hancock
Doctor Hancock


No. 126. page 8
Pond
Sec 25
38° 30' East 79.38 chs
Survey No. 3120
Big fork of the Maranec
Decision No. 2
Sec 36
or his Legal
representatives . 35-28 arpens = 3001 acres
Sec 30
Sec 29
East 40.86
Sec 31
Pascal de Cerré
Sec 32
Maranec
South 113.84 chs
S 87° 30' W 181.92 chains
40.72
40.35
39.93
39.92
A
Line between townships 5 & 38 north
60.00 chs
Big spring
Seel
S 87° 45' W 79.97
39.73
40.24
35.14
Variation 8° East
Scale of 40 chains to an inch